

ADMINISTRATOR'S PROFESSIONAL PRACTICES BOARD

Respondent.)

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On February 28, 2000, Sondag filed an “APPEAL THE REVOKING OF MY
CERTIFICATE,” in which he asks the Board to “reconsider the status of my teaching certificate.” In

his answer to the Complaint, Sondag acknowledges the criminal judgment and states that what he did was wrong, but he asks that his teaching license not be revoked, and that he be allowed to continue to teach and administer in his current position at Selfridge Public Schools.

On May 10, 2000, the Board requested the designation of an administrative law judge (ALJ) from the Office of Administrative Hearings to conduct a hearing, and issue recommended findings of fact and conclusions of law, as well as a recommended order in regard to the Complaint. On May 15, 2000, the undersigned ALJ was designated. Throughout this proceeding Sondag has represented himself. Mr. Peterson has represented the Board.

On May 22, 2000, the ALJ issued a Notice of Hearing. The notice scheduled a June 27, 2000, hearing in the Office of Administrative Hearings, Bismarck, North Dakota. However, on May 31, 2000, Sondag wrote to the ALJ informing him that he would begin serving his jail sentence in regard to the criminal Judgment on June 1, 2000, in the Ward County Jail. On June 13, 2000, Sondag again wrote to the ALJ informing him that he did not believe that he could be released to attend the hearing. Sondag asked for a continuance. *See* also June 10, 2000, Sondag's letter to Mr. Peterson.

On June 7, 2000, the ALJ wrote to Mr. Peterson about Sondag's situation and asked for some suggestions for resolution of the problem. On June 13, 2000, Mr. Peterson wrote to the ALJ indicating that he advised Sondag of four options. In a June 13 letter to Sondag, Peterson offered him the options of default, participation in a hearing via telephone, disposition via a stipulation of facts and written closing argument ("briefs"), and a continuance of the hearing if he surrendered his license. On June 20, 2000, Mr. Peterson notified the ALJ, that by an undated letter he had received from Sondag, Sondag had indicated that he wished to resolve the matter via the filing of a stipulation of facts and briefs.

On June 22, 2000, the ALJ issued a Notice of Continuance Cancellation of Hearing Briefing Schedule. He cancelled the June 27 hearing, continued it, and ordered that the matter be decided on the submission of a stipulation of facts and briefs. He also set a schedule for the submission of a stipulation of facts and the filing of briefs.

The parties filed an Amended Stipulation of Facts in regard to the professional teaching license of Mark J. Sondag on July 27, 2000. Sondag filed his brief on August 3, 2000. Peterson filed the Board's brief on August 14, 2000. (It should be noted that several times throughout these proceedings, Sondag filed with the ALJ letters that could be considered as argument in this matter. These letters usually included copies of relevant letters by others, and other relevant documents attached to his letter. The ALJ will consider all of Sondag's letters and attachments in this regard as part of his argument in this matter, *i.e.* all part of his brief.)

The ALJ will not be stating separate recommended findings of fact in this decision. Rather, the bases for his recommended conclusions of law will be the Amended Stipulation of Facts, with attachments, which will serve as the Recommended Findings of Fact. Therefore, the ALJ's decision will include a Conclusions of Law section and an Evaluation of the Evidence and Analysis section which should not be considered to be findings of fact.

Based on the Amended Stipulation of Facts and the briefs of the parties, the ALJ makes the following recommended Conclusions of Law.

CONCLUSIONS OF LAW

1. N.D.C.C. §§ 15-36-15 and 15-36-16 are the relevant statutory provisions regarding disciplinary administrative action against a professional teaching license. N.D.C.C. § 15-36-15 states, in part, as follows:

15-36-15. Revocation of teacher's certificates - Grounds - Effect. The ... administrator's professional practices board in the case of a school administrator may suspend for a period of time, or revoke and annul any professional teaching license granted in this state upon any or all of the following grounds:

* * *

3. The licensee has been convicted or pled guilty or nolo contendere before a court of competent jurisdiction in this ... state ... of an offense determined by the ... board ... to have a direct bearing upon a person's ability to serve the public as a teacher or administrator, or the ... board ... determines, following conviction of any offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1.

* * *

(Emphasis supplied.)

2. N.D.C.C. § 15-36-16 states, in part, as follows:

15-36-16. Proceedings to suspend, revoke, or annul license. The ... administrator's professional practices board in the case of a school administrator, upon the receipt of a complaint alleging grounds to suspend for a period of time, revoke, or annul any professional teaching license as set forth in section 15-36-15, and upon the determination that sufficient evidence exists to sustain the charges in the complaint, shall conduct proceedings in accordance with chapters 28-32. Upon completion of the proceedings, if the ... board ... finds that grounds to annul, revoke, or suspend for a period of time do exist, the ... board shall issue an order in the manner provided in chapters 28-32 to annul, revoke, or suspend for a period of time the professional teaching license of such person as provided in section 15-36-15.

3. N.D.C.C. § 12.1-01-04 defines “[o]ffense” as meaning “conduct for which a term of imprisonment or a fine is authorized by statute after conviction.” N.D.C.C. § 12.1-01-04(20).

4. Although N.D.C.C. § 15-36-15 and 15-36-16 only specifically allow for the administrative remedies or penalties of suspension, revocation, or annulment of license, the Board may impose a lesser penalty. *See* August 14, 1995, Attorney General letter to the Honorable Alvin A. Jaeger, 1995 WL 840589.

5. N.D.C.C. § 15-36-15(3) poses alternative grounds for administrative action as the Board contends in its brief. Board’s brief at 1-2. After the language allowing for administrative action for conviction of a crime having a direct bearing on ability to serve the public, the section states “or the . . . board . . . determines, following conviction of any offense, that the person is not sufficiently rehabilitated under § 12.1-33-02.1.” N.D.C.C. § 15-36-15 (3). (Emphasis supplied.) The language of N.D.C.C. § 12.1-33-02.1(1) seems to support this reasoning; it too poses alternative grounds for denying a license or certificate.

6. N.D.C.C. § 12.1-33-02.1, states, in part, as follows:

12.1-33-02.1. Prior conviction of a crime not bar to state licensures - Exceptions.

1. A person may not be disqualified to practice, pursue, or engage in any . . . profession for which a license . . . is required from any state . . . board . . . solely because of prior conviction of an offense. However, a person may be denied a license . . . because of prior conviction of an offense if it is determined that such person has not been sufficiently rehabilitated, or that the offense has a direct bearing upon a person’s ability to serve the public in the specific . . . profession.

2. A state . . . board . . . shall consider the following in determining sufficient rehabilitation:

- a. The nature of the offense and whether it has a direct bearing upon the qualifications, function, or duties of the specific ... profession.
- b. Information pertaining to the degree of rehabilitation of the convicted person.
- c. The time elapsed since the conviction or release. Completion of a period of five years after final discharge or release from any term of probation, parole or other form of community corrections, or imprisonment, without subsequent conviction shall be deemed *prima facie* evidence of sufficient rehabilitation.

(Emphasis supplied.)

7. It is obvious that the criminal offense, theft of property from a school, is a crime directly related to a teacher's or administrator's ability to perform his or her job. If a teacher or administrator steals from the school with which he is employed, he has failed to properly serve the public as a teacher or administrator.

8. Because Sondag's 1999 conviction does have a direct bearing on his ability to serve the public as a teacher and administrator, and because the Board is authorized to and apparently wishes to adopt such a conclusion (*see* Board's brief, at 2-3), the Board need not make a conclusion about whether Sondag is or is not sufficiently rehabilitated. Any presumption of rehabilitation, then, is irrelevant, too.

9. Even if rehabilitation were squarely an issue in this matter, under N.D.C.C. § 12.1-33-02.1(2)(c) there is not *prima facie* evidence of rehabilitation. Therefore, the Board would have to consider "[t]he nature of the offense and whether it has a direct bearing upon the qualifications, functions or duties of the specific ... profession," and "[i]nformation pertaining to the degree of rehabilitation of the convicted person," and "[t]he time elapsed since conviction or release." N.D.C.C. § 12.1-33-02.1(2)(a),(b),(c). The consideration under subdivision a is

essentially the same consideration as under subsection 1. The consideration under subdivisions b and c are different. However, Sondag presented no significant evidence of the degree of his rehabilitation, and the time elapsed since conviction or release is not five years. Indeed, it has only been a few weeks since Sondag's release from jail.

10. The burden of proof in regard to a Complaint is on the Board; it must prove, by the greater weight of the evidence, that Sondag violated the specified provisions of law and should now have his valid professional teaching license revoked. The Board has met its burden of proof in this regard. The relevant facts are stated in the Amended Stipulation of Facts, paragraphs 2 through 6, and 8. In fact, Sondag readily admits allegations of the Complaint.

11. The evidence shows, by the greater weight of the evidence, that the Board has grounds for disciplinary action against Sondag under N.D.C.C. §§ 15-36-15 and 15-36-16 for a violation involving N.D.C.C. § 15-36-15(3). A Complaint was properly filed against Sondag; a stipulation of facts was filed in lieu of a hearing held under N.D.C.C. ch. 28-32; and grounds for suspension, revocation, or annulment under N.D.C.C. § 15-06-15 were proven.

12. Under N.D.C.C. §§ 15-36-15 and 15-36-16, the Board has the authority to suspend, revoke, or annul Sondag's license, or to take less severe action against Sondag, such as a written reprimand.

EVALUATION OF THE EVIDENCE AND ANALYSIS

The gist of Sondag's briefs are that he did something seriously wrong, but he should still be allowed to continue teaching, mostly because he is a good teacher and administrator and the Selfridge Public Schools needs him. Sondag minimizes the fact that he has been convicted of a crime that has a

direct bearing on his ability to serve the public. However, the Board has a duty to protect the public and cannot ignore Sondag's criminal conviction. At least, the Board should not ignore it without the passage of time and/or some significant evidence of Sondag's rehabilitation. In fact, the Board could consider Sondag's conviction a permanent bar to him ever being licensed again. The ALJ does not suggest that a permanent bar is appropriate, even considering the nature of an offense that could theoretically always have a direct bearing on Sondag's ability to serve the public.

Although, the effect of the conviction need not be permanent; yet, the Board is entitled to be assured by at least the passage of time (without any further criminal convictions) that Sondag is again capable of serving the public. Currently, there is no real assurance that Sondag is capable of serving the public in the appropriate fashion, even though he says that he can do so, and other teaching professionals say that he can. Accordingly, Sondag's professional teaching license should be revoked.

RECOMMENDED ORDER

The greater weight of the evidence shows that Sondag violated the provisions of law as indicated above. The Board has authority to revoke Sondag's professional teaching license, No 43861. Counsel for the Board recommends revocation. Revocation is appropriate. It is **HEREBY ORDERED** that Sondag's professional teaching license, No. 43861 is **REVOKED**.

Dated at Bismarck, North Dakota, this 21st day of August 2000.

State of North Dakota
Administrator's Professional Practices Board

By: _____
Allen C. Hoberg
Administrative Law Judge
Office of Administrative Hearings
1707 North 9th Street - Lower Level
Bismarck, North Dakota 58501-1882
Telephone: (701) 328-3260